IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No.6428 of 2007

1. Kolhapur Zilla Khadi Va
Gramodyog Sangh ..Petitioner

vs.

Shri Balasaheb Rangrao Patil ..Respondent

Shri A.C.Singh for petitioner.
Shri Amit Borkar for respondent.

CORAM: S.C.DHARMADHIARI J.
17th December, 2007

P.C.

1. This writ petition challenges the order dated 14th June, 2007 passed by the Joint Charity Commissioner, Kolhapur Region, Kolhapur below Exh.96 in Application No. 117 of 2001 impleading the respondent as party to the application no.117 of 2001.

2. The application invoked section 73A of the Bombay Public Trust Act, 1950 which reads thus:

> "73A: In any proceedings under this Act, any person having interest in the public trust may be joined as a party to such proceedings on an application made by such person or such terms and

conditions as the officer holding the inquiry may order.

3. Shri Borkar would urge that the respondent made this application as a third party for the purpose of pointing out to the Joint Charity commissioner that the property of the Trust is being sold and while the same is being purported to be sold, the interest of the beneficiaries and the persons like the present petitioners have not been considered.

4. The Charity Commissioner has, after considering the application and reply thereto, allowed the same and joined the present respondent and that is how the Trust has filed the instant petition. The only reason that is being assigned in the impugned order is that the applicant before the Joint Charity Commissioner is a khadi user so also social activitist in the field of khadi. He is a Journalist. He is a person having interest in the Trust.

5. Section 36 of the Bombay Public Trust Act, 1950 provides for previous sanction of the Charity Commissioner for sale, exchange or gift of any immovable property. The Charity

Commissioner has to grant such sanction if he is satisfied that the sale is in the interest of the Trust and he may allow the same on such conditions regards being had to the interest or protest of the Trust. The Rules namely Rule 24 of the Bombay Public Trust Rules, 1951 provide for contents of the application and there are specific clauses regarding which information is to be provided. The same reads thus:

> "24. Applications under section 36 for sanction of alienations:
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> (1) Every application for sanction of an alienation shall contain information inter alia on the following points:-
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> (i) whether the intrument of trust contains any directions as to alienation of immovable property;
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> (ii) what is the necessity for the proposed alienation;
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> (iii) how the proposed alienation is in the interest of the public trust; and;

(iv) in the case of a proposed lease, the terms of the past leases, if any, such application shall be accompanied, as far as practicable, by a valuation report of an expert.

(2) The Charity Commissioner, before according or refusing sanction, may make such inquiry as he may deem necessary.

(3) In according sanction, the Charity Commissioner may impose such conditions or give such direction as he may deem fit."

6. While it is true that the enquiries that are being made under the Act are referred to in Rule 7 and manner is stipulated therein, yet, I am of the view that in the peculiar facts of this case, the Charity Commissioner should not have granted the subject application. While section 73A provides for joining of the parties to such proceedings as are being enquired into or pending enquiry, yet, this Court in the Full Bench Decision in the case of Shailesh Developers and ors. Vs.Joint Charity Commissioner, Maharashtra and others reported in

2007(3) B.C.R.7 (Sailesh Developers and ors. Vs.Joint Charity Commissioner Maharashtra and ors) clarified the scope of the enquiry and observed that the Charity Commissioner has to safeguard the interest of the Trust as well as interest of the beneficiaries. I have no doubt in my mind that it being his paramount duty merely because the respondent before me is not allowed to be impleaded as a party that aspect will not be considered by the learned Charity Commissioner. The reference before the Full Bench arose when the Court was called upon to decide as to whether the offers of the third parties can be considered or not. The observations in that behalf are made in paras 28, 29 and 30 by the Full Bench of this Court. The Full Bench proceeded to answer the reference and in para 31 it observed thus:

> "Hence, we answer the questions referred to our decision as under:
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> (i) The power vesting in the Charity Commissioner under section 36 of the Bombay Public Trust Act, 1950 is not confined merely to grant or refusal of sanction to a particular sale

transaction in respect of which sanction is sought under section 36 of the said Act. The power of the Charity Commissioner extends to inviting offers from the members of the public and directing the trustees to sell or transfer the trust property to a person whose bid or quotation is the best having regard to the interest, benefit or protection of the Trust. Hence, we declare that the decision of the Division Bench of this Court in the case of M/s Jigna Construction Co. Mumbai Vs. State of Maharaashtra and others does not lay down correct law.

(ii) The party who comes forward and submits his offer directly before the Charity Commissioner and complies with other requirements as may be laid down by the Charity Commissioner in a pending application under section 36 of the said Act of 1950 has a locus standi to challenge the final order passed in a proceeding under section 36. However, the scope of the challenge will be limited as indicated in paragraph 29

above.

(iii) We direct the office to place the writ petitions before the appropriate Benches for deciding the same in accordance with law."

7. Such being the nature of the proceedings,to my mind, the applicant before the Joint Charity Commissioner could not have been made party. However, while setting aside the impugned order, I wish to clarify that I have not in any manner held that the petitioner is not a person having interest within the meaning of section 2(10) of the Bombay Public Trust Act, 1950. The observations are confined to the present enquiry and proceedings under sec.36 and if the respondent is aggrieved by actions of the Trust, including its decision to alienate the properties, it is open for the respondent-applicant to initiate such proceedings as are permissible in law. The petition is allowed. The impugned order is quashed and set aside. The Charity Commissioner now to proceed with the pending application and dispose it off in accordance with law. The Charity Commissioner will follow the Full Bench

decision reported in 2007(3) B.C.R.7 (supra). petition is disposed of.

(S.C.DHARMADHIKARI J.)